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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Peter Biar Ajak,

Defendant.

CR-24-00394-PHX-SPL-2

**REPLY TO  
UNITED STATES' RESPONSE TO  
MOTION TO REVOKE  
DETENTION ORDER**

Peter Biar Ajak, by and through undersigned counsel, hereby files this Reply to United States' Response to Motion to Revoke Detention Order and asks this Court to release him pursuant to the terms of the Bail Reform Act codified in 18 U.S.C. § 3142 and § 3145. Mr. Ajak replies as follows:

**I. Mr. Ajak's Motion is not untimely and can be heard de novo by the District Court.**

The government argued that Mr. Ajak's motion is an appeal, and that Fed. R. Crim. P. 59(a) only gave Mr. Ajak fourteen days after the detention order was issued to file an appeal or it is waived.

1 Mr. Ajak's motion is not an appeal. His motion, asking this Court to revoke the standing  
2 detention order, is brought pursuant to 18 U.S.C. § 3145(b); appeals are dealt with in 18 U.S.C. §  
3 3145(c) *after* determination of a motion seeking revocation of a detention order.

4 Second, 18 U.S.C. § 3145 proscribes no time limit. The fourteen-day deadline is a product of  
5 Fed. R. Crim. P. 59(a). Even if applicable to 18 U.S.C. § 3145, the "the district judge retains the  
6 authority to review any magistrate judge's decision or recommendation whether or not objections are  
7 timely filed." Fed. R. Crim. P. 59, Committee Notes on Rules (2005) (citing *Thomas v. Arn*, 474 U.S.  
8 140, 154 (1985). *See also Matthews v. Weber*, 423 U.S. 261, 270 –271 (1976)); *United States v.*  
9 *Tooze*, 236 F.R.D. 442, 445-446 (D. Ariz. 2006) ("[n]o language in the rule precludes discretionary  
10 review by district courts"). Even if Rule 59(a) applies here, the District Court retains the discretion to  
11 review the matter *de novo*.

12 Third, the government's reliance on *Tooze* is distinguishable from this case. In *Tooze*, the  
13 government moved to revoke an order of release pursuant to 18 U.S.C. § 3145(a). Even though the  
14 court in *Tooze* denied the government's appeal as untimely under Rule 59(a), it exercised its  
15 discretion to review the matter *de novo* and ultimately ruled in the government's favor to detain the  
16 defendants. *Tooze*, 236 F.R.D. at 446.

17 Fourth, the District Court should use its discretion to review this matter because Judge Willett  
18 relied heavily on the alleged facts of the case, which are to be given the least amount of weight of all  
19 the 18 U.S.C. § 3142(g) factors when determining whether to detain a defendant. In its Response, the  
20 government again argued that Mr. Ajak should be detained as both a flight risk and a danger, and they  
21 relied exclusively on the allegations levied against him. Yet, unproven allegations and alleged facts  
22 are the *least* important factor when determining release and the factor to be given the *least* weight by  
23 the court. *See United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986).  
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1           Moreover, since the original detention hearing, circumstances have changed. The pace and  
2 complexity of the case as well as Mr. Ajak's health, are vastly different today than five months ago.  
3 Maybe most importantly, the relocation of Mr. Ajak's family to Arizona provides him a stable home  
4 within the District of Arizona. "The hearing may be reopened ... *at any time before trial* if the  
5 judicial officer finds that information exists that was not known to the movant at the time of the  
6 hearing and that has a material bearing on the issue whether there are conditions of release that will  
7 reasonably assure the appearance of such person as required and the safety of any other person and  
8 the community." 18 U.S.C. § 3142(f) (emphasis added).

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10           Neither Mr. Ajak nor undersigned counsel could have had any idea how large and complex  
11 this case was at the time of the detention hearing. And it continues to grow. In its Response, the  
12 government repeatedly writes that the investigation is "ongoing," and that it is looking into potential  
13 charges against others. Response at 20. Without revoking the detention order, a longer and larger  
14 investigation just means more time Mr. Ajak unnecessarily sits in pretrial custody. Mr. Ajak needs to  
15 be able to work with his legal team without restraint to defend against the serious charges against  
16 him. He is housed more than an hour away from counsel, has restricted hours he can meet with or  
17 speak with counsel, and even with access to a laptop and chunks of discovery materials at a time,  
18 there is very little he can actually do to assist in his defense while detained.

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20           Additionally, at the time Mr. Ajak went into detention, he was not having any medical  
21 concerns. When not in custody, he routinely self-treats it. He is unable to do that while in custody.  
22 And the condition worsens with time if not addressed. His medical records show that he has seen the  
23 medical providers at CoreCivic on at least four occasions to alleviate the pain he's experiencing, and  
24 each time they have not provided the help he requires. *See* Response, Attachment C.  
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1 Finally, prior to Mr. Ajak's arrest and detention, his family had absolutely no reason to leave  
2 their home in Maryland and relocate, let alone relocate to Arizona. Even at the time of his detention,  
3 there was no discussion of moving to Arizona. Given the seriousness of the case and the expected  
4 timelines for the matter to reach trial, his family made the decision to move to be closer to Mr. Ajak  
5 throughout the process. His children are enrolled in local schools, his wife has entered a rental  
6 agreement of a residence, and the family is settling in to provide a place for Mr. Ajak if he is released,  
7 and to be near him if he is not.  
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9 **II. Why Will Mr. Ajak Appear if Released?**

10 Mr. Ajak should be released from custody as he poses no risk of nonappearance for court  
11 proceedings and is no danger to the community. He has no criminal history and no reason not to  
12 appear. Even Pretrial Services believes there are adequate conditions that can be imposed to assure  
13 he appears for all court hearings. There is a multitude of conditions at the court's disposal, including:  
14 remaining in the custody of a designated person, seeking and maintaining employment, seeking or  
15 beginning a school program, restricting associations and travel (including a curfew), requiring regular  
16 reporting to pretrial services, prohibiting possession of weapons, requiring he post a bond, GPS  
17 monitoring, and so forth. *See* 18 U.S.C. § 3142(c)(1)(A) and (B).  
18

19 **He is safe here and cannot feasibly go anywhere else --** He and his family are legally  
20 present in the United States and have been granted asylum because he was marked for assassination  
21 by the ruling regime of South Sudan. Besides the fact that he risks being killed if he were to flee the  
22 United States, he cannot flee as his South Sudanese passport (his only passport) was collected by  
23 authorities. Further, Mr. Ajak has no financial means to flee as he has no access to large amounts of  
24 money as claimed by the government.  
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1           **His family now lives in Arizona** -- In July 2024, Mr. Ajak's wife, Nyathon Mai, and their  
2 four children relocated to Scottsdale, Arizona. Ms. Mai has found housing, enrolled their children in  
3 local schools, they have joined a local church, and she is actively looking for work. As such, Mr.  
4 Ajak now has significant contacts in the District of Arizona to support him upon his release, and  
5 contrary to the government's beliefs, there is no other place Mr. Ajak would or could go.  
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7           **He needs adequate medical treatment and the opportunity to get it** -- Mr. Ajak's oddly  
8 complicated foot condition impairs his ability to use his feet and requires self-help measures (cutting  
9 them out with a razor blade) or medical intervention. Mr. Ajak has reported the issue to the medical  
10 providers at CoreCivic Florence on several occasions, but they have not adequately addressed it. If  
11 he were released, with the court and pretrial services' permission, he would take the opportunity to  
12 seek out appropriate medical care.  
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14           **He respects the court and has no prior criminal history** – Mr. Ajak poses no danger to any  
15 community and no criminal history. Regardless of what he has been charged with and accused of, his  
16 history and characteristics show him to be an educated, active and contributing member of society.  
17 He respects authority and this court and is eager to see this process through to the end. The Pretrial  
18 Services Report clearly stated, "there are no known factors indicating the defendant poses a risk of  
19 danger to the community." ECF No. 7 at 4. Mr. Ajak has no criminal history, no history of alcohol  
20 or drug abuse, he has no passport or means to flee, and he has the most compelling of reasons to  
21 remain in Arizona and resume being a contributing member of society—his family is now here and  
22 needs to face the charges against him. Arizona is the safest place for all of them to remain during the  
23 pendency of this case. Although the allegations are serious, the government's argument that the  
24 unproven allegations in the complaint are sufficient to prove by clear and convincing evidence that  
25 Mr. Ajak poses a danger to any community, without any history indicating the same, is without merit.  
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1 Nothing in Mr. Ajak's history indicates he would fail to appear as instructed. However,  
2 should this Court have even the slightest concerns about Mr. Ajak's likelihood to appear before the  
3 court, there are a myriad of options to assure his appearance. From home detention, GPS monitoring,  
4 a third-party custodian, a bond, to travel and other restrictions and regular check-ins with pretrial  
5 services, there are plenty of ways to make sure Mr. Ajak appears for court.  
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7 **CONCLUSION:**

8 For the reasons stated herein, Defendant Peter Biar Ajak, respectfully requests that the Court  
9 revoke the detention order and order his release pursuant to the terms of the Bail Reform Act codified  
10 in 18 U.S.C. § 3142 and § 3145, pending conclusion of this case.

11 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of September 2024.

12 **KURT M. ALTMAN, P.L.C.**

13 /s/ Kurt M. Altman  
14 Kurt M. Altman  
15 Ashley Fitzwilliams  
16 *Attorneys for Defendant*  
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1 I hereby certify that on the 6<sup>th</sup> day of September 2024,  
2 I electronically transmitted the attached  
3 document to the Clerk's Office using the  
4 CM/ECF system for filing and transmittal  
5 of a Notice of Electronic Filing to the  
6 following CM/ECF registrants:

7 Honorable Steven P. Logan  
8 United States District Court Judge  
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19 By: /s/ Kurt M. Altman